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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

STATE OF HAWAI'I

v.

GERHARDT KONIG,

Defendant.

CASE NO.: 1CPC-25-0000373

ATTEMPTED MURDER IN THE
SECOND DEGREE
(\$705-500, 707-701.5 and 706-656 HRS)
(REPORT/CITATION NO. 25110958-001)

STATE'S THIRD NOTICE OF INTENT
TO USE EVIDENCE OF DEFENDANT'S
OTHER CRIMES, WRONGS, OR ACTS;
DECLARATION OF COUNSEL;
MEMORANDUM IN SUPPORT OF
MOTION

STATE'S THIRD NOTICE OF INTENT TO USE EVIDENCE
OF DEFENDANT'S OTHER CRIMES, WRONGS OR ACTS

The STATE OF HAWAI'I, by and through Joel R. Garner, Deputy Prosecuting Attorney for the City and County of Honolulu, State of Hawai'i gives formal notice of the State's intention to use evidence of Defendant's ("Defendant") other crimes, wrongs or acts at the trial of the above-captioned case:

- (1) In Defendant's first marriage, which lasted from 1999 to 2014, Defendant committed the following acts of violence and/or behaviors of coercive control:

- a. In November 2012, Defendant's ex-wife wanted to attend an academic conference that Defendant did not want her to attend, the Defendant got upset and threw his ex-wife's books on the ground.
- b. In 2014, Defendant's ex-wife was at a separate academic event, the Defendant demanded that his ex-wife return home. When she did not return home immediately, the Defendant locked the family dog on the porch in 5° F weather. This occurred in Pittsburgh, PA, in January.

(2) In Defendant's first marriage, he committed the following acts involving sexual coercion:

- a. Defendant demanded sex constantly, as many as three times per day, for the entire nineteen-year marriage.
- b. Beginning in 2006, through 2007, Defendant demanded that his ex-wife perform sexual acts on him, and when she could not or would not perform those acts, Defendant would scream at and berate his ex-wife.
- c. In 2009, Defendant pressured his ex-wife into entering a "swinging" lifestyle. When she did not want to date new couples or have sex with other couples, Defendant would throw fits and scream at her.

(3) In Defendant's first marriage, he committed the following acts involving spying or conducting surveillance through the use of technology:

- a. Defendant used an iPod touch to log into his ex-wife's Apple account so that Defendant could monitor her communications including text messages and emails. Defendant's ex-wife only became aware of this when Defendant

suggested that the couple conduct the same type of surveillance on their child-
in-common.

Dated at Honolulu, Hawai'i: January 23, 2026.

STATE OF HAWAI'I

By STEVEN S. ALM
Prosecuting Attorney

By /s/ JOEL R. GARNER

JOEL R. GARNER
Deputy Prosecuting Attorney
City and County of Honolulu

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DECLARATION OF JOEL R. GARNER

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I, JOEL R. GARNER, declare that:

1. I am an attorney licensed to practice law in the State of Hawai'i. I am a Deputy Prosecuting Attorney with the City and County of Honolulu, State of Hawai'i, assigned to this case.

2. I have reviewed the records and files of the above-captioned case and am familiar with the facts and circumstances underlying the charges offenses.

3. The facts alleged in the attached memorandum are based upon the records and files of Case No. 1CPC-25-0000373, and are true and correct upon information and belief.

4. Defendant Gerhardt Konig is charged with Attempted Murder in the Second Degree in violation of Hawai'i Revised Statutes § 705-500, 707-701.5 and 706-656.

5. The alleged offense took place on or about March 24, 2025, under Honolulu Police Department report number 25110958-001.

6. The State of Hawai'i's witness to Defendant's other crimes, wrongs, or acts is Jessica Patella-Rey.

7. A copy of the witness' interview was provided to Defendant's counsel on May 29, 2025, and subsequently transcripts of the witness' interview were provided as well.

8. On January 22, 2026, the State conducted a follow-up interview with Ms. Patella-Rey regarding the specific time periods in which the events she discussed during her original interview occurred. A report detailing that interview was provided promptly to Defendant's counsel.

9. I, JOEL R. GARNER, declare under penalty of law that the foregoing is true and correct to the best of my knowledge and belief.

Executed on January 23, 2026.

/s/ JOEL R. GARNER
JOEL R. GARNER

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MEMORANDUM IN SUPPORT OF
NOTICE

MEMORANDUM IN SUPPORT OF NOTICE

Rule 404(b) of the Hawaii Rules of Evidence (H.R.E.) provides:

Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible where such evidence is probative of another fact that is of consequence to the determination of the action, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, modus operandi, or absence of mistake or accident. In criminal cases, the proponent of evidence to be offered under this subsection shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the date, location, and general nature of any such evidence it intends to introduce at trial.

Thus, evidence of other crimes, wrongs, and acts which is offered to show some propensity to commit an offense is “unequivocally inadmissible.” *State v. Castro*, 69 Haw. 633, 644, 756 P.2d 1033, 1041 (1988).

However, the second sentence of Rule 404(b), H.R.E. states that such evidence may be admissible to prove “any other fact that is of consequence to the determination of the action”. Evidence is admissible where it is probative of any other fact that is of consequence to the determination of the case, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, modus operandi, or absence of mistake or accident. *Id.* at 643, 756 P.2d at 1041. Once the Court has found the evidence to be of some probative value, the Court must then decide if the probative value of the evidence is substantially outweighed by the danger of unfair,

prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. *State v. Pinero*, 70 Haw. 509, 778 P.2d 704 (1989).

Therefore, the first question is whether the evidence is being offered for purposes other than mere character and propensity. “The list of permissible purposes in Rule 404(b) is not intended to be exhaustive ‘for the range of relevancy outside the ban is almost indefinite.’” *State v. Clark*, 83 Hawai‘i 289, 300-01, 926 P.2d 194, 205-06 (1996) (citation omitted). “Rule 404(b) was intended not to define the set of permissible purposes for which bad-acts evidence may be admitted but rather to define the *one impermissible* purpose for such evidence.” *State v. Behrendt*, 124 Hawai‘i 90, 103, 237 P.3d 1156, 1169 (2010) (citation omitted) (emphasis added). *See e.g., State v. Morishige*, 65 Haw. 354, 652 P.2d 1119 (1982) (prior criminal acts admissible to establish necessary intent of attempted murder, and to rebut insanity defense); *State v. Thompson*, 1 Haw. App. 49, 613 P.2d 908 (1980) (evidence of prior forgery admitted to prove intent); *State v. Renon*, 73 Haw. 23, 828 P.2d 1266 (1992) (evidence of earlier “gang shooting” admissible to prove intent, motive, and plan); *State v. Prince*, 67 Haw. 231, 683 P.2d 1217 (1984) (evidence of spending spree admissible to prove identity of the robber); and *State v. Iaukea*, 56 Haw. 343, 537 P.2d 724 (1975) (defendant's other criminal acts, of which the victim was aware, admissible when issue is forcible compulsion).

In *State v. Castro*, the Hawaii Supreme Court held that:

[I]n deciding whether the danger of unfair prejudice ... substantially outweighs the incremental probative value, a variety of matters must be considered, including the strength of the evidence as to the commission of the other crime, the similarities between the crimes, the interval of time that has elapsed between the crimes, the need for the evidence, the efficacy of alternative proof, and the degree to which the evidence probably will rouse the jury to overmastering hostility.

Id. at 644, 756 P.2d at 1041. The Court also held that this analysis of probative value versus prejudice must be done by the trial court on the record. *See also, State v. Pinero*, 70 Haw. at 518, 778 P.2d at 711 (error for the trial court to fail to analyze prejudice on the record).

In *State v. Behrendt*, 124 Hawai‘i 90, 237 P.3d 1156 (2010), the Hawai‘i Supreme Court directly addressed the admissibility of a defendant’s uncharged prior sexual contacts with a minor victim. In *Behrendt*, the Court held that the defendant’s “prior bad acts,” which included uncharged sexual contacts with the minor victim in South Dakota were:

probative of defendant’s opportunity to later commit charged sexual assaults in Hawai‘i without being detected; victim had become acclimated to sexual contact with defendant by the time that she returned to Hawai‘i with defendant and her older sister, to whom defendant was married, such that victim’s failure to cry out or tell anyone what had occurred when, for example, defendant had sex with her while her sister slept in same bed was consistent with relationship that had been established in South Dakota.

Id. at 105, 237 P.3d at 1171.

Additionally, the Court further held that the defendant’s prior bad acts were relevant to establish: 1) defendant’s “opportunity to engage in sexual contacts in Hawai‘i without being detected,” 2) “how the relationship between [defendant] and [victim] had developed so that the sexual contacts in Kona could take place without [victim] reporting them,” 3) “that [defendant] had initially explored [victim]’s willingness to engage in sexual conduct,” and 4) “that [defendant] developed a relationship of trust and control with [victim] in South Dakota.” *Id.* at 105, 237 P.3d at 104.

The *Behrendt* Court then considered the admissibility of the defendant’s “prior bad acts” under H.R.E. Rule 403. The Court held that under the factors of H.R.E. Rule 403¹:

¹ The factors under H.R.E. Rule 403 as stated by the *Behrendt* Court included the following

“these factors weigh in favor of admission of the evidence,” based upon the following: 1) “[t]he strength of the evidence of the uncharged conduct is essentially the same as for the charged offenses,” 2) “[t]he similarities between the crimes were strong, since the conduct in South Dakota was in substance the same as that in Hawai‘i . . . [and] it immediately preceded the conduct in Hawai‘i and thus was not remote in time,” 3) “[t]here was a substantial need for prior bad acts evidence when the exclusion of the evidence will create a false impression by the jury regarding the actions of the complaining witness,” 4) “[t]here was no alternative way to establish the progression of [defendant]’s behaviors, including his seduction and testing of [victim] and his development of a relationship of trust and control over her as their sexual relationship evolved,” and 5) “the evidence of the conduct in South Dakota was not likely to rouse the jury to an overmastering sense of hostility . . . [, as it] was of the same general type and involved the same complaining witness as the conduct in Hawai‘i.”

Id. at 107, 237 P.3d at 1173. Therefore, the court in *Behrendt* held that the defendant’s prior uncharged sexual contacts with the minor victim in South Dakota were admissible under H.R.E. Rules 403 and 404(b). *Id.* at 108, 237 P.3d at 1174.

One of the largest takeaways from the *Behrendt* decision is that the *context* of a relationship matters – the control that a Defendant obtains and exerts over a victim is a permissible reason to introduce a defendant’s prior bad acts under HRE 404(b). More recently, the Hawaii Legislature also recognized the importance of context in a domestic violence

. . . the strength of the evidence as to the commission of the other crime, the similarities between the crimes, the interval of time that has elapsed between the crimes, the need for the evidence, the efficacy of alternative proof, and the degree to which the evidence probably will rouse the jury to overmastering hostility.

124 Hawai‘i at 107, 237 P.3d at 1173 (citing *State v. Renon*, 73 Haw. 23, 38, 828 P.2d 1266, 1273 (1992),

relationship when they defined “coercive control” in HRS § 586-1 and criminalized the exercise of coercive control on family or household members in HRS § 709-906(6).

Under HRS § 586-1:

"Coercive control" means a pattern of threatening, humiliating, or intimidating actions, which may include assaults, or other abuse that is used to harm, punish, or frighten an individual. "Coercive control" includes a pattern of behavior that seeks to take away the individual's liberty or freedom and strip away the individual's sense of self, including bodily integrity and human rights, whereby the "coercive control" is designed to make an individual dependent by isolating them from support, exploiting them, depriving them of independence, and regulating their everyday behavior including:

- (1) Isolating the individual from friends and family;
- (2) Controlling how much money is accessible to the individual and how it is spent;
- (3) Monitoring the individual's activities, communications, and movements;
- (4) Name-calling, degradation, and demeaning the individual frequently;
- (5) Threatening to harm or kill the individual or a child or relative of the individual;
- (6) Threatening to publish information or make reports to the police or the authorities;
- (7) Damaging property or household goods; and
- (8) Forcing the individual to take part in criminal activity or child abuse.

Defendant’s prior acts identified in this notice clearly fit the definition of “coercive control” in that Defendant attempted to isolate his ex-wife from her job, monitored his ex-wife’s private communications, name-called and degraded her, threatened to harm the household pet, and damaged his ex-wife’s household goods. These actions, just like those in *Berhendt*, are the same or similar conduct as the conduct that Defendant engaged in for the months preceding the offense in this case. The strength of the evidence is the same – both rely on testimony of a woman in a relationship with the Defendant. While there are some differences to this notice and the prior bad acts in the *Berhendt* case, namely a larger time gap and a different complainant, neither of those factors tip the scales to the point that the danger of “unfair prejudice”

substantially outweighs the probative value. This prior bad act evidence is highly probative and relevant to show that Defendant's actions between December 2024 and March 2025 were not coincidental in nature; they were an intentional attempt to create a dynamic of coercive control after Defendant discovered his wife's "inappropriate relationship". These similar acts that Defendant committed in his prior marriage – the sexual coercion, the cyberstalking, and the efforts to control his ex-wife are the exact same strategy the Defendant used between December 2024 and March 2025 in this case. This evidence is not offered to prove the character of the Defendant to show he acted in conformity with these other acts – the State is simply seeking to admit Defendant's prior incidents that indicate an intentional strategy of coercive control.

Additionally, the evidence adduced in this notice may become relevant to rehabilitate the credibility of any state witness who is impeached after testifying to Defendant's same or similar behavior. Given the filing under Docket 217 of this case, where Defendant, through his attorney, accuses the complainant of "attempt[ing] to manipulate the narrative and falsely portray[] herself as a victim of sexual coercion", the need for this evidence is even greater, as this evidence is strongly corroborative of the Defendant's intent with his actions that were directed towards the complainant. Lastly, under HRE 404(a)(1), this evidence may be relevant as rebuttal of pertinent character evidence offered by Defendant.

This notice is made pursuant to Rule 12(d)(1) of the Hawai'i Rules of Penal Procedure.

Dated at Honolulu, Hawai'i: January 23, 2026.

STATE OF HAWAII
By STEVEN S. ALM
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By /s/ JOEL R. GARNER
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